



March 23, 2007

ENGROSSED SENATE BILL No. 311

DIGEST OF SB 311 (Updated March 21, 2007 4:25 pm - DI 69)

Citations Affected: IC 31-9; IC 31-34; noncode.

Synopsis: Child in need of services (CHINS). Provides that if the department of child services (department) determines that: (1) a child is a child in need of services; and (2) the child would be protected in the child's residence by the removal of the alleged perpetrator of child abuse or neglect; the department may file a petition to remove the alleged perpetrator from the child's residence instead of attempting to remove the child from the child's residence. Allows a court to issue a temporary restraining order in an action by the department for the removal of the alleged perpetrator of child abuse or neglect. Makes it a Class A misdemeanor for: (1) a parent or other adult with whom a child continues to reside after the issuance of a temporary restraining order to knowingly or intentionally fail to comply with the requirements of the order; or (2) for an alleged perpetrator of child abuse to knowingly or intentionally return to a child's residence in violation of an order. Requires a court to consider placing a child with a de facto custodian or stepparent before considering an out-of-home placement when a child alleged to be a child in need of services is taken into custody.

Effective: July 1, 2007.

Hershman

(HOUSE SPONSORS — WELCH, GUTWEIN)

January 11, 2007, read first time and referred to Committee on Judiciary.
February 15, 2007, reported favorably — Do Pass.
February 19, 2007, read second time, ordered engrossed. Engrossed.
February 20, 2007, read third time, passed. Yeas 47, nays 0.

HOUSE ACTION

March 12, 2007, read first time and referred to Committee on Courts and Criminal Code.
March 22, 2007, amended, reported — Do Pass.

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ES 311—LS 7208/DI 110+



March 23, 2007

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 311

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 31-9-2-14, AS AMENDED BY P.L.1-2006,
2 SECTION 496, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) "Child abuse or neglect", for
4 purposes of IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and IC 31-39-8-4,
5 refers to a child who is alleged to be a child in need of services as
6 described in IC 31-34-1-1 through IC 31-34-1-5.

7 (b) **For purposes of subsection (a)**, the term **under subsection (a)**
8 does not refer to a child who is alleged to be a child in need of services
9 if the child is alleged to be a victim of a sexual offense under
10 IC 35-42-4-3 unless the alleged offense under IC 35-42-4-3 involves
11 the fondling or touching of the buttocks, genitals, or female breasts.

12 (c) **"Child abuse or neglect", for purposes of IC 31-34-2.3, refers**
13 **to acts or omissions by a person against a child as described in**
14 **IC 31-34-1-1 through IC 31-34-1-9.**

15 SECTION 2. IC 31-9-2-35.5, AS AMENDED BY P.L.145-2006,
16 SECTION 186, IS AMENDED TO READ AS FOLLOWS
17 [EFFECTIVE JULY 1, 2007]: Sec. 35.5. "De facto custodian", for

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purposes of IC 31-14-13, ~~and~~ IC 31-17-2, **and IC 31-34-4**, means a person who has been the primary caregiver for, and financial support of, a child who has resided with the person for at least:

- (1) six (6) months if the child is less than three (3) years of age; or
- (2) one (1) year if the child is at least three (3) years of age.

Any period after a child custody proceeding has been commenced may not be included in determining whether the child has resided with the person for the required minimum period. The term does not include a person providing care for a child in a foster family home (as defined in IC 31-9-2-46.9).

SECTION 3. IC 31-34-2.3 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 2.3. Removal of Alleged Perpetrators

Sec. 1. If, after an investigation, the department determines that:

- (1) a child is a child in need of services; and
 - (2) the child would be protected in the child's residence by the removal of the alleged perpetrator of child abuse or neglect;
- the department may file a petition to remove the alleged perpetrator from the child's residence instead of attempting to remove the child from the child's residence.

Sec. 2. (a) A court may issue a temporary restraining order in an action by the department for the removal of an alleged perpetrator of child abuse or neglect under section 1 of this chapter if the department's petition to remove the alleged perpetrator states facts sufficient to satisfy the court of all of the following:

- (1) There is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse.
- (2) There is not time for an adversary hearing given the immediate danger to the physical health or safety of the child.
- (3) The child is not in danger of child abuse or neglect from a parent or other adult with whom the child will continue to reside in the child's residence.
- (4) The issuance of a temporary restraining order is in the best interest of the child.

(b) The court shall order the temporary removal of an alleged perpetrator of child abuse or neglect from a child's residence if the court finds:

- (1) that the child is not in danger of child abuse or neglect

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from a parent or other adult with whom the child will continue to reside in the child's residence; and

(2) one (1) or more of the following:

(A) The presence of the alleged perpetrator in the child's residence constitutes a continuing danger to the physical health or safety of the child.

(B) The child has been the victim of sexual abuse, and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator remains in the child's residence.

Sec. 3. The department shall serve a temporary restraining order issued under section 2 of this chapter on:

(1) the alleged perpetrator of child abuse or neglect; and

(2) the parent or other adult with whom the child will continue to reside.

Sec. 4. A temporary restraining order issued under this chapter expires not later than the fourteenth day after the date the temporary restraining order is issued.

Sec. 5. A temporary restraining order issued under this chapter or any other order that requires the removal of an alleged perpetrator of child abuse or neglect from the residence of a child must require that the parent or other adult with whom the child will continue to reside in the child's residence makes reasonable efforts:

(1) to monitor the residence; and

(2) to report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator of child abuse or neglect to return to the child's residence.

Sec. 6. A parent or other adult with whom a child continues to reside after the issuance of a temporary restraining order for removal of an alleged perpetrator of child abuse or neglect who knowingly or intentionally fails to comply with the requirements under section 5 of this chapter commits a Class A misdemeanor.

Sec. 7. An alleged perpetrator of child abuse who knowingly or intentionally returns to a child's residence in violation of an order issued under this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the alleged perpetrator has a prior unrelated conviction under this section.

SECTION 4. IC 31-34-4-2, AS AMENDED BY P.L.145-2006, SECTION 290, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 2. (a) If a child alleged to be a child in need of services is taken into custody under an order of the court

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under this chapter, the court shall consider placing the child with a:

(1) suitable and willing blood or **an** adoptive relative caretaker, including a grandparent, an aunt, an uncle, or an adult sibling;

(2) **de facto custodian; or**

(3) **stepparent;**

before considering any other out-of-home placement.

(b) Before placing a child in need of services with a blood relative or an adoptive relative caretaker, **a de facto custodian, or a stepparent**, the court may order the department to:

(1) complete a home study of the relative's home; and

(2) provide the court with a placement recommendation.

(c) Except as provided in subsection (e), before placing a child in need of services in an out-of-home placement, including placement with a blood or an adoptive relative caretaker, **a de facto custodian, or a stepparent**, the court shall order the department to conduct a criminal history check of each person who is currently residing in the location designated as the out-of-home placement.

(d) Except as provided in subsection (f), a court may not order an out-of-home placement if a person described in ~~subsection (c)(1) or (c)(2)~~ **subsection (c)** has:

(1) committed an act resulting in a substantiated report of child abuse or neglect; or

(2) been convicted of a felony listed in IC 31-27-4-13 or had a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult.

(e) The court is not required to order the department to conduct a criminal history check under subsection (c) if the court orders an out-of-home placement to an entity or a facility that is not a residence (as defined in IC 3-5-2-42.5) or that is licensed by the state.

(f) A court may order an out-of-home placement if:

(1) a person described in ~~subsection (c)(1) or (c)(2)~~ **subsection (c)** has:

(A) committed an act resulting in a substantiated report of child abuse or neglect; or

(B) been convicted or had a juvenile adjudication for:

(i) reckless homicide (IC 35-42-1-5);

(ii) battery (IC 35-42-2-1) as a Class C or D felony;

(iii) criminal confinement (IC 35-42-3-3) as a Class C or D felony;

(iv) arson (IC 35-43-1-1) as a Class C or D felony;

(v) a felony involving a weapon under IC 35-47 or IC 35-47.5 as a Class C or D felony;

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(vi) a felony relating to controlled substances under IC 35-48-4 as a Class C or D felony; or

(vii) a felony that is substantially equivalent to a felony listed in items (i) through (vi) for which the conviction was entered in another state; and

(2) the court makes a written finding that the person's commission of the offense, delinquent act, or act of abuse or neglect described in subdivision (1) is not relevant to the person's present ability to care for a child, and that the placement is in the best interest of the child.

However, a court may not order an out-of-home placement if the person has been convicted of a felony listed in IC 31-27-4-13 that is not specifically excluded under subdivision (1)(B), or has a juvenile adjudication for an act that would be a felony listed in IC 31-27-4-13 if committed by an adult that is not specifically excluded under subdivision (1)(B).

(g) In making its written finding under subsection (f), the court shall consider the following:

(1) The length of time since the person committed the offense, delinquent act, or abuse or neglect.

(2) The severity of the offense, delinquent act, or abuse or neglect.

(3) Evidence of the person's rehabilitation, including the person's cooperation with a treatment plan, if applicable.

SECTION 5. [EFFECTIVE JULY 1, 2007] IC 31-34-2.3-6 and IC 31-34-2.3-7, both as added by this act, apply only to offenses committed after June 30, 2007.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 311, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 311 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred Senate Bill 311, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 31-9-2-14, AS AMENDED BY P.L.1-2006, SECTION 496, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. (a) "Child abuse or neglect", for purposes of IC 31-32-11-1, IC 31-33, IC 31-34-7-4, and IC 31-39-8-4, refers to a child who is alleged to be a child in need of services as described in IC 31-34-1-1 through IC 31-34-1-5.

(b) **For purposes of subsection (a)**, the term **under subsection (a)** does not refer to a child who is alleged to be a child in need of services if the child is alleged to be a victim of a sexual offense under IC 35-42-4-3 unless the alleged offense under IC 35-42-4-3 involves the fondling or touching of the buttocks, genitals, or female breasts.

(c) **"Child abuse or neglect", for purposes of IC 31-34-2.3, refers to acts or omissions by a person against a child as described in IC 31-34-1-1 through IC 31-34-1-9."**

Page 1, between lines 14 and 15, begin a new paragraph and insert:

"SECTION 3. IC 31-34-2.3 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]:

Chapter 2.3. Removal of Alleged Perpetrators

Sec. 1. If, after an investigation, the department determines that:

- (1) a child is a child in need of services; and

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(2) the child would be protected in the child's residence by the removal of the alleged perpetrator of child abuse or neglect; the department may file a petition to remove the alleged perpetrator from the child's residence instead of attempting to remove the child from the child's residence.

Sec. 2. (a) A court may issue a temporary restraining order in an action by the department for the removal of an alleged perpetrator of child abuse or neglect under section 1 of this chapter if the department's petition to remove the alleged perpetrator states facts sufficient to satisfy the court of all of the following:

- (1) There is an immediate danger to the physical health or safety of the child or the child has been a victim of sexual abuse.
- (2) There is not time for an adversary hearing given the immediate danger to the physical health or safety of the child.
- (3) The child is not in danger of child abuse or neglect from a parent or other adult with whom the child will continue to reside in the child's residence.
- (4) The issuance of a temporary restraining order is in the best interest of the child.

(b) The court shall order the temporary removal of an alleged perpetrator of child abuse or neglect from a child's residence if the court finds:

- (1) that the child is not in danger of child abuse or neglect from a parent or other adult with whom the child will continue to reside in the child's residence; and
- (2) one (1) or more of the following:
 - (A) The presence of the alleged perpetrator in the child's residence constitutes a continuing danger to the physical health or safety of the child.
 - (B) The child has been the victim of sexual abuse, and there is a substantial risk that the child will be the victim of sexual abuse in the future if the alleged perpetrator remains in the child's residence.

Sec. 3. The department shall serve a temporary restraining order issued under section 2 of this chapter on:

- (1) the alleged perpetrator of child abuse or neglect; and
- (2) the parent or other adult with whom the child will continue to reside.

Sec. 4. A temporary restraining order issued under this chapter expires not later than the fourteenth day after the date the temporary restraining order is issued.

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Sec. 5. A temporary restraining order issued under this chapter or any other order that requires the removal of an alleged perpetrator of child abuse or neglect from the residence of a child must require that the parent or other adult with whom the child will continue to reside in the child's residence makes reasonable efforts:

- (1) to monitor the residence; and**
- (2) to report to the department and the appropriate law enforcement agency any attempt by the alleged perpetrator of child abuse or neglect to return to the child's residence.**

Sec. 6. A parent or other adult with whom a child continues to reside after the issuance of a temporary restraining order for removal of an alleged perpetrator of child abuse or neglect who knowingly or intentionally fails to comply with the requirements under section 5 of this chapter commits a Class A misdemeanor.

Sec. 7. An alleged perpetrator of child abuse who knowingly or intentionally returns to a child's residence in violation of an order issued under this chapter commits a Class A misdemeanor. However, the offense is a Class D felony if the alleged perpetrator has a prior unrelated conviction under this section."

Page 3, after line 24, begin a new paragraph and insert:

"SECTION 5. [EFFECTIVE JULY 1, 2007] IC 31-34-2.3-6 and IC 31-34-2.3-7, both as added by this act, apply only to offenses committed after June 30, 2007."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 311 as printed February 16, 2007.)

HOY, Chair

Committee Vote: yeas 12, nays 0.

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